

No. 15757

United States
Court of Appeals
for the Ninth Circuit

LAURENCE V. KANTER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

FILED

DEC 20 1957

PAUL P. TRENKLE, CLERK

Appeal from the United States District Court for the
Southern District of California,
Central Division.

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[Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

BRYANT R. BURTON,
611 Wilshire Boulevard,
Los Angeles 17, California.

For Appellees:

LAUGHLIN E. WATERS,
United States Attorney;

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Los Angeles 12, California;

CHARLES K. RICE,
Assistant U. S. Attorney General,
Department of Justice,
Washington 25, D. C.

In the United States District Court, Southern District of California, Central Division

No. 15350—W. M.

LAURENCE V. KANTER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR THE RECOVERY OF INDIVIDUAL INCOME TAXES AND INTEREST THEREON ERRONEOUSLY AND ILLEGALLY COLLECTED

Comes now the plaintiff and complains of the defendant and for cause of action alleges:

I.

That at all times herein mentioned, plaintiff was, and now is, a resident of the County of Los Angeles, State of California, United States of America, within the Sixth Internal Revenue Collection District of the State of California.

II.

That at all times from and after the first day of July, 1943, and to and including October 31, 1949, Harry C. Westover was the duly appointed, qualified and acting Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California. That on or about October 31, 1949, the said

Harry C. Westover resigned as the Collector of Internal Revenue for said District. That the said Harry C. Westover is the person to whom [2*] the sums herein sought to be recovered were paid as hereinafter set forth.

III.

That this is an action for the recovery of Federal income taxes and interest for the calendar years 1945, 1946 and 1947, erroneously and illegally collected from plaintiff in the respective amounts of Seven Hundred Ninety-Four Dollars and Five cents (\$794.05) plus interest respecting the year 1945, Three Thousand Three Hundred Two Dollars and Seventy-Three cents (\$3,302.73) plus interest respecting the year 1946 and Four Thousand Five Hundred Fifty-Three Dollars and Fifty-Five cents (\$4,553.55) plus interest respecting the year 1947. That this Court has jurisdiction under the provisions of the Judicial Code of the United States, 28 U.S.C.A., Section 1346, Subsection (a)(1).

IV.

That during the calendar years 1945, 1946 and 1947, and thereafter plaintiff was the beneficiary of a certain trust created on or about March 3, 1944, by Minnie F. Kanter, his mother. That said trust created by Minnie F. Kanter was for a term of fifteen (15) years and ten (10) months and provided that during the term of said trust the income would be accumulated for the period March 3, 1944, to January 2, 1950, at which later date said accumu-

***Page numbering appearing at foot of page of original Certified Transcript of Record.**

lated income would be distributable to the plaintiff. That thereafter the income from the trust for the period January 3, 1950, to January 2, 1955, would be accumulated at which later date said accumulated income would become distributable to the plaintiff. That the income from the trust for the period January 3, 1955, to January 2, 1960, would be accumulated at which later date said accumulated income would become distributable to the plaintiff. That on the termination of the trust, all corpus and accumulated income would be distributed to plaintiff. That the trust instrument provided that the trust was irrevocable and the trustor, Minnie F. Kanter, [3] did not reserve any right to change, amend or alter the trust instrument or withdraw any of the property from the trust and said trustor retained no control over the trust corpus whatsoever. That upon the death of the plaintiff, prior to the termination of the trust, as beneficiary of the income and remainder, the principal and accumulated income would be distributed to the heirs of law of the plaintiff; provided, however, that in no event would any principal or income of the trust ever be distributed or revert to the trustor. That the trustor, Minnie F. Kanter, gave one hundred fifty (150) shares of the common stock of Shop 'N Save, a California corporation, to said trust as its corpus. That thereafter, on or about April 1, 1944, the corporation was dissolved and a limited partnership was organized pursuant to the limited partnership law of the State of California. That on the dissolution of the corporation the one hundred fifty (150) shares of capital stock of Shop

'N Save held by the trust as corpus were cancelled and delivered up in exchange for a 6.81 per cent undivided interest as a limited partner in the profits and assets of the limited partnership. That a certificate of limited partnership was duly executed and filed in the office of the county recorder of the County of Los Angeles on April 1, 1944. That during the years 1945, 1946 and 1947, the aforementioned trust was a limited partner in said limited partnership doing business under the name of "Kanter & Wolins." That during the years 1945, 1946 and 1947, the 6.81 percentage of the partnership income was pursuant to the terms of the trust agreement accumulated and added to the corpus of the trust and was not distributed to plaintiff.

V.

That on or about March 15, 1946, the trustees of the trust prepared and filed on behalf of the trust a fiduciary income tax return respecting the trust's 6.81 percentage of the distributable share of the limited partnership income for the calendar [4] year 1945 and because said income was not distributed to beneficiaries the return reported and showed a tax payable on account of such income. That the income tax due respecting said income was paid by the trustees to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California. That on or about March 15, 1947, the trustees of the trust prepared and filed on behalf of the trust a fiduciary income tax return respecting the trust's 6.81 percentage of the distributable share of the limited partnership

income for the calendar year 1946 and because said income was not distributed to beneficiaries the return reported and showed a tax payable on account of such income. That the income tax due respecting said income was paid by the trustees to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California. That on or about March 15, 1948, the trustees of the trust prepared and filed on behalf of the trust a fiduciary income tax return respecting the trust's 6.81 percentage of the distributable share of the limited partnership income for the calendar year 1947 and because said income was not distributed to beneficiaries the return reported and showed a tax payable on account of such income. That the income tax due respecting said income was paid to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California. That pursuant to Section 162 of the Internal Revenue Code, in each of the years 1945, 1946 and 1947, the entire income of the trust was to be accumulated and added to corpus and not distributed to the beneficiary and accordingly the income tax respecting said income was properly reported and paid by the trustees on behalf of the trust.

VI.

That on or about June 18, 1948, the Commissioner of Internal Revenue mailed to plaintiff a thirty-day letter wherein [5] said Commissioner proposed to assess against the plaintiff a deficiency in income

taxes for the calendar year 1945 on the theory that the income of the trust was properly reportable in the taxable income of the plaintiff as the beneficiary of the trust. That on or about November 1, 1948, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1945 against plaintiff in the amount of Eight Hundred Three Dollars and Seventy-Two cents (\$803.72) plus interest, and that on or about February 25, 1949, plaintiff paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California.

That on or about March 21, 1949, a similar thirty-day letter was mailed to the plaintiff wherein the Commissioner of Internal Revenue proposed a similar deficiency against plaintiff for the taxable years 1946 and 1947. That on or about March 30, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1946 against plaintiff in the amount of Three Thousand Four Hundred Eighty-Eight Dollars and Sixty-Four cents (\$3,488.64) plus interest, and that on or about June 9, 1949, plaintiff paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California. That on or about March 30, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1947 against plaintiff in the amount of Five Thousand Four Hundred Ninety-Two Dollars and Sixty-Two

cents (\$5,492.62) plus interest, and that on or about June 9, 1949, plaintiff paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California.

VII.

That on or about August 12, 1950, the plaintiff caused to be filed with Harry C. Westover, Collector of Internal Revenue, [6] for the Sixth Internal Revenue Collection District of California, his written claim for refund of income taxes and interest erroneously assessed and collected from plaintiff as aforesaid for the calendar years 1945, 1946 and 1947. That said claims sought the recovery of the sum of Seven Hundred Ninety-Four Dollars and Five cents (\$794.05) plus interest respecting the calendar year 1945, Three Thousand Three Hundred Two Dollars and Seventy-Three cents (\$3,302.73) plus interest respecting the year 1946 and Four Thousand Five Hundred Fifty-Three Dollars and Fifty-Five cents (\$4,553.55) plus tax respecting the calendar year 1947, that being those portions of the deficiencies asserted aforesaid which related to the inclusion in plaintiff's gross income of the income of the trust. That said claims for refund were based upon the same grounds and facts relied upon herein.

VIII.

That on April 5, 1951, the Commissioner of Internal Revenue disallowed the claims for refund respecting the calendar years 1946 and 1947 by sending a notice of disallowance to that effect by reg-

istered mail to plaintiff. A copy of said notice is attached hereto marked Exhibit "A," and is hereby made a part hereof as though the same were written at length herein. That although more than six (6) months has elapsed since the filing of said claim, plaintiff has not received notice of disallowance of the claim for refund respecting the year 1945.

IX.

That no part of said sum sought to be refunded by said claims, as and for income taxes and interest as aforesaid, has been refunded to plaintiff by defendant or any other person. That no action has been had in Congress upon said claims for refund, or in any department of the Government. That plaintiff is the sole owner of said claims for refund herein sued upon and has not at any time assigned or transferred said claims; that plaintiff is [7] entitled to the amount herein claimed from the defendant and there is no just credit or offset against said claims which is known to the plaintiff.

X.

That the income of the trust for the calendar years 1945, 1946 and 1947, was pursuant to the terms of the trust instrument accumulated and added to corpus. That pursuant to the terms of Section 162 of the Internal Revenue Code, Federal income tax respecting said income of the trust was properly payable by the trustees as the fiduciary of the trust and was not properly taxable to or reportable by the beneficiary, the plaintiff herein. That by reason of

the inclusion of such trust income in the taxable income of the plaintiff, income taxes for the year 1945 of Seven Hundred Ninety-Four Dollars and Five cents (\$794.05) plus interest and for the year 1946 of Three Thousand Three Hundred Two Dollars and Seventy-Three cents (\$3,302.73) plus interest and for the year 1947 of Four Thousand Five Hundred Fifty-Three Dollars and Fifty-Five cents (\$4,553.55) plus interest were erroneously collected from plaintiff. That the whole amount thereof, namely, Eight Thousand Six Hundred Fifty Dollars and Thirty-Three cents (\$8,650.33) plus interest together with interest thereon as provided by law is now due and owing to said plaintiff.

Wherefore, plaintiff prays for judgment against the defendant in the sum of Eight Thousand Six Hundred Fifty Dollars and Thirty-Three cents (\$8,650.33) together with interest thereon as provided by law and for such other and further relief as to the Court may seem just and proper in the premises.

ADAMS, DUQUE &
HAZELTINE,

By /s/ BRYANT R. BURTON,
Attorneys for Plaintiff. [8]

EXHIBIT A

U. S. Treasury Department
Washington 25

Apr. 5, 1957

Office of
Commissioner of Internal Revenue

Address reply to
Commissioner of Internal Revenue
and refer to

IT:C1:CC:Rej

Lawrence V. Kanter
10100 Sunset Blvd.
Los Angeles, California

In re: Claims for refund of \$3,302.73;
\$4,553.55 for the years 1946 and 1947.

Dear Mr. Kanter:

In accordance with the provisions of section 3772 (a)(2) of the Internal Revenue Code, this notice of disallowance in full of your claim or claims is hereby given by registered mail.

By direction of the Commissioner:

Very truly yours,

/s/ E. J. McLARNEY,
Deputy Commissioner.

[Endorsed]: Filed April 3, 1953. [9]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, United States of America, in the above-entitled action and in answer to plaintiff's complaint, admits, denies and alleges:

I.

The defendant admits the allegations of paragraph I of the complaint.

II.

The defendant admits the allegations of paragraph II of the complaint.

III.

The defendant admits the allegations of paragraph III of the complaint, except that it denies that any part of the tax complained of was erroneously or illegally collected.

IV.

The defendant says that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph IV of the complaint. [10]

V.

(a) The defendant says that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph V of the complaint which relate to the calendar year 1945.

(b) The defendant admits the allegations of paragraph V of the complaint regarding the filing of tax returns and payment of tax for each of the calendar years 1946 and 1947. It says that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph regarding the percentage share of alleged limited partnership income of the alleged trust, and regarding the alleged non-distribution of income of the alleged trust to its beneficiaries, for each of the calendar years 1946 and 1947.

(c) The defendant further says that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence of paragraph V of the complaint.

VI.

(a) The defendant says that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph VI of the complaint.

(b) The defendant admits assessment against and payment by plaintiff of a deficiency in income taxes for the year 1945 as alleged in paragraph VI of the complaint, except that it says such payment was made on or about March 15, 1949.

(c) The defendant admits the allegations of the first sentence of the second paragraph of paragraph VI of the complaint, except that it says it is without knowledge or information sufficient to make a responsive pleading to the word "similar" therein.

(d) The defendant admits assessment against plaintiff of deficiencies in income taxes for the years 1946 and 1947 as alleged in paragraph VI of the complaint, but it says that the [11] deficiencies so assessed were satisfied as follows:

1946 Additional:

Paid 6/28/49\$ 267.08

Offset of overassessments:

Laurence V. Kanter Trust #2, 1946.. 1,501.86

Laurence V. Kanter Trust #6, 1946.. 36.43

Laurence V. Kanter Trust #2, 1947.. 1,862.70

Laurence V. Kanter Trust #6, 1947.. 250.10

\$3,918.17

1947 Additional:

Paid 6/9/49\$ 722.20

Monthly Payments of \$568.57 each

September, 1949-May, 1950..... 5,117.13

Paid 5/18/50 189.07

\$6,028.40

VII.

The defendant admits the allegations of paragraph VII of the complaint, except that it denies that any part of the taxes complained of was erroneously assessed or collected.

VIII.

The defendant admits the allegations of paragraph VIII of the complaint.

IX.

The defendant admits the allegations contained in the first two sentences of paragraph IX of the complaint. It denies the remaining allegations of that paragraph.

X.

The defendant says that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first and second sentences of paragraph X of the [12] complaint. It denies the remaining allegations of that paragraph.

Wherefore, having fully answered, defendant demands judgment against the plaintiff, dismissing his action with prejudice, and awarding to it all lawful costs and disbursements.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Assistant United States At-
torney, Chief, Tax Division.

/s/ EDWARD R. McHALE,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed March 16, 1955. [13]

United States District Court for the Southern
District of California, Central Division

No. 15350-WM Civil

LAURENCE V. KANTER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 15399-WM Civil

RUTH WOLINS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 15534-WM Civil

JEROME B. KANTER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

STIPULATION OF FACT

It Is Hereby Stipulated and Agreed by and between the parties hereto through their respective counsel, without prejudice to the rights of any party herein to introduce additional evidence not incon-

sistent herewith, and without prejudice to their right to object to the materiality or relevancy of any of the facts agreed to, as follows: [15]

I.

On the 3rd day of March, 1944, Minnie F. Kanter as trustor executed a certain Declaration of Trust (hereinafter referred to as the Laurence V. Kanter Trust), a copy of which is attached hereto as Exhibit A, with Albert L. Wolins and Ruth Wolins as trustees and Laurence V. Kanter as beneficiary. Simultaneously Minnie F. Kanter executed a substantially identical Declaration of Trust (hereinafter referred to as the Jerome B. Kanter Trust), a copy of which is attached hereto as Exhibit B, with Ruth Wolins and Laurence V. Kanter as trustees and Jerome B. Kanter as beneficiary. Also simultaneously Minnie F. Kanter executed a substantially identical Declaration of Trust (hereinafter referred to as the Ruth Wolins Trust), a copy of which is attached hereto as Exhibit C, with Laurence V. Kanter and Albert L. Wolins as trustees and Ruth Wolins as beneficiary. Laurence V. Kanter and Jerome B. Kanter are sons of the trustor, and Ruth Wolins is the daughter of the trustor. Albert L. Wolins is the husband of Ruth Wolins. There was assigned, delivered and endorsed 150 shares of common stock of Shop 'N Save, a California corporation, as the original corpus of each of said trusts.

II.

On or about April 1, 1944, Shop 'N Save, a California corporation, was partially liquidated and a

limited partnership, under the name of Kanter & Wolins (hereinafter referred to as "Kanter & Wolins") was organized pursuant to the Limited Partnership Law of the State of California. On the partial liquidation of the corporation, the shares of capital stock held by the respective trusts as corpus were cancelled and delivered in exchange for interests as limited partners in the assets and profits of Kanter & Wolins. A Certificate of Limited Partnership, a copy of which is attached hereto as Exhibit D, was duly executed and filed in the office of the County Recorder of Los Angeles County on April 1, 1944, and in said certificate of limited partnership the Laurence V. Kanter Trust, the Jerome B. Kanter Trust, and the Ruth Wolins Trust were each listed as limited partners to the extent of \$15,900.00 each, which represented a [16] 6.81% undivided interest as a limited partner in Kanter & Wolins.

III.

During the years 1945, 1946 and 1947, the limited partnership filed partnership income tax returns on which it listed each of the aforementioned trusts as being limited partners, and as such chargeable with their distributable shares of the partnership profits. During such years the trustees of the Laurence V. Kanter Trust, the Jerome B. Kanter Trust and the Ruth Wolins Trust did not distribute any part of the trust income to the beneficiaries.

IV.

On or about March 15, 1945, Minnie Kanter, trustor, filed a gift tax return in which she declared

as gifts to Laurence V. Kanter, Jerome B. Kanter and Ruth Wolins the sum of \$15,900.00 as representing the fair market value of the 150 shares of common capital stock of Shop 'N Save transferred to each of the trusts. In such gift tax return she claimed the benefit of the \$3,000.00 annual exclusion for gifts made to any one person. Thereafter the Commissioner of Internal Revenue asserted a gift tax deficiency with respect to such transfers on the grounds that the transfers in trust represented gifts of a future interest with regard to which the \$3,000.00 annual exclusion for gifts to individuals is not applicable, and a gift tax deficiency of \$742.50 was paid by Minnie Kanter.

V.

On or before the 15th day of March, 1946, the trustees of the Laurence V. Kanter Trust, the Jerome B. Kanter Trust and the Ruth Wolins Trust prepared and filed on behalf of such trusts fiduciary income tax returns for the calendar year 1945, and reported in each fiduciary return the trust's 6.81 percentage of the distributable share of the Kanter & Wolin's partnership income for the fiscal year April 1, 1944, to March 31, 1945. Because such trust income was not distributed to the beneficiary, the return reported and showed a tax payable by the trust on account of such income. The income tax respecting such income was duly paid by the trustees of each of the trusts, to the Collector of Internal Revenue, Los Angeles, California, for the Sixth [17] Internal Revenue District of California.

VI.

On or before the 15th day of March, 1947, the trustees of the Laurence V. Kanter Trust, the Jerome B. Kanter Trust and the Ruth Wolins Trust prepared and filed on behalf of such trusts fiduciary income tax returns for the calendar year 1946, and reported in each fiduciary return the trust's 6.81 percentage of the distributable share of the Kanter & Wolins' partnership income for the fiscal year April 1, 1945, to March 31, 1946. Because such trust income was not distributed to the beneficiary, the return reported and showed a tax payable by the trust on account of such income. The income tax due respecting such income was duly paid by the trustees of each of the trusts, to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California.

VII.

On or before the 15th day of March, 1948, the trustees of the Laurence V. Kanter Trust, the Jerome B. Kanter Trust and the Ruth Wolins Trust prepared and filed on behalf of such trusts fiduciary income tax returns for the calendar year 1947, and reported in each fiduciary return the trust's 6.81 percentage of the distributable share of the Kanter & Wolins' partnership income for the fiscal year April 1, 1946, to March 31, 1947. Because such trust income was not distributed to the beneficiary, the return reported and showed a tax payable by the trust on account of such income. The income tax due respecting such income was duly paid by the trustees of each of the trusts, to the

Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California.

VIII.

On or about June 18, 1948, the Commissioner of Internal Revenue mailed to Laurence V. Kanter a thirty-day letter wherein said Commissioner proposed to assess against said Laurence V. Kanter a deficiency in income taxes for the calendar year 1945 on the theory that the income of the Laurence V. Kanter Trust was properly reportable in the taxable income of Laurence V. Kanter as the beneficiary of the trust. On or about November 1, 1948, the [18] Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1945 against Laurence V. Kanter in the amount of \$803.72 plus interest, and on or about March 15, 1949, Laurence V. Kanter paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California.

On or about March 21, 1949, a thirty-day letter was mailed to Laurence V. Kanter wherein the Commissioner of Internal Revenue proposed a deficiency against said Laurence V. Kanter for the taxable years 1946 and 1947 on the same grounds as with regard to the year 1945. On or about March 30, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1946 against Laurence V. Kanter in the amount of \$3488.64 plus interest, and on or about June 28, 1949, Laurence V. Kanter paid said

amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California, as follows:

1946 Additional:

Paid June 28, 1949\$ 267.08

Offset of overassessments:

Laurence V. Kanter

Trust No. 2, 1946 1,501.86

Laurence V. Kanter

Trust No. 6, 1946 36.43

Laurence V. Kanter

Trust No. 2, 1947 1,862.70

Laurence V. Kanter

Trust No. 6, 1947 250.10

\$3,918.17

On or about March 30, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1947 against said Laurence V. Kanter in the amount of \$5492.62 plus interest, and Laurence V. Kanter paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California, as follows:

1947 Additional:

Paid June 9, 1949 [19].....\$ 722.20

Monthly Payments of \$568.57 each

September, 1949-May, 1950 5,117.13

Paid May 18, 1950 189.07

\$6,028.40

IX.

On or about June 18, 1948, the Commissioner of Internal Revenue mailed to Jerome B. Kanter a thirty-day letter wherein said Commissioner proposed to assess against said Jerome B. Kanter a deficiency in income taxes for the calendar year 1945 on the theory that the income of the Jerome B. Kanter Trust was properly reportable in the taxable income of Jerome B. Kanter as the beneficiary of the trust. On or about January 7, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1945 against Jerome B. Kanter in the amount of \$375.32 plus interest, and on or about March 15, 1949, Jerome B. Kanter paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California.

On or about March 21, 1949, a thirty-day letter was mailed to Jerome B. Kanter wherein the Commissioner of Internal Revenue proposed a deficiency against said Jerome B. Kanter for the taxable years 1946 and 1947 on the same grounds as with regard to the year 1945. On or about May 20, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1946 against Jerome B. Kanter in the amount of \$2,461.23 plus interest, and Jerome B. Kanter paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the

Sixth Internal Revenue District of California, as follows:

1946 Additional:

Offset of Overassessments:

Jerome B. Kanter Trust No. 1, 1946..\$1,501.86

Jerome B. Kanter Trust No. 5, 1946.. 36.43

Jerome B. Kanter Trust No. 1, 1947.. 1,225.97

\$2,764.26

On or about May 20, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1947 against said Jerome B. Kanter in the amount of \$3,624.74 plus interest, and Jerome B. Kanter paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California, as follows:

1947 Additional:

Paid June 9, 1949\$2,966.71

Offset of Overassessments:

Jerome B. Kanter Trust No. 1, 1947.. 636.73

Jerome B. Kanter Trust No. 5, 1947.. 250.10

\$3,853.54

X.

On or about June 18, 1948, the Commissioner of Internal Revenue mailed to Ruth Wolins a thirty-day letter wherein said Commissioner proposed to assess against said Ruth Wolins a deficiency in income taxes for the calendar year 1945 on the

theory that the income of the Ruth Wolins Trust was properly reportable in the taxable income of Ruth Wolins as the beneficiary of the trust. On or about November 1, 1948, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1945 against Ruth Wolins in the amount of \$1,129.30 plus interest, and on or about March 15, 1949, Ruth Wolins paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California.

On or about March 21, 1949, a thirty-day letter was mailed to Ruth Wolins wherein the Commissioner of Internal Revenue proposed a deficiency against said Ruth Wolins for the taxable years 1946 and 1947 on the same grounds as with regard to the year 1945. On or about March 30, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1946 against Ruth Wolins in the amount of \$4,482.70 plus interest, and on or about June 9, 1949, Ruth Wolins paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, [21] for the Sixth Internal Revenue District of California, as follows:

1946 Additional:

Paid June 9, 1949.....\$ 444.11

Offset of Overassessments:

Albert L. Wolins, 1946	318.95
Albert L. Wolins, 1947	620.46
Ruth Wolins Trust No. 3, 1946	1,501.86

Ruth Wolins Trust No. 7, 1946	36.43
Ruth Wolins Trust No. 3, 1947	1,862.70
Ruth Wolins Trust No. 7, 1947	250.10
	<hr/>
	\$5,034.61

On or about March 30, 1949, the Commissioner of Internal Revenue assessed a deficiency in income taxes respecting the year 1947 against said Ruth Wolins in the amount of \$8,278.77 plus interest, and on or about June 9, 1949, Ruth Wolins paid said amount plus interest to the Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California, as follows:

1947 Additional:

Paid June 9, 1949	\$1,088.60
Monthly Payments of \$856.97 each	
September, 1949-May, 1950	7,712.73
	<hr/>
	\$8,801.33

Dated: This 1st day of February, 1957.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Asst. U. S. Attorney, Chief,
Tax Division;

By /s/ EDWARD R. McHALE,
Attorneys for Defendant.

ADAMS, DUQUE &
HAZELTINE,

By /s/ BRYANT R. BUSTON,
Attorneys for Plaintiff.

[Endorsed]: Filed February 1, 1957. [22]

[Title of District Court and Cause.]

ORDER FOR FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND JUDGMENT

The three above-numbered cases having been tried jointly pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and submitted for decision, Findings of Fact, [23] Conclusions of Law, and Judgment are now ordered in favor of defendant and against plaintiff in each case; and will be lodged with the Clerk by the attorneys for defendant, pursuant to local rule 7, within ten days.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail upon the attorneys for the parties appearing in these causes.

June 28, 1957.

/s/ WM. C. MATHES,
United States District Judge.

[Endorsed]: Filed July 2, 1957. [24]

United States District Court for the Southern
District of California, Central Division

No. 15350-WM Civil

LAURENCE V. KANTER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT

The above case, together with its companion cases of Ruth Wolins v. United States of America, No. 15399-WM Civil, and Jerome B. Kanter v. United States of America, No. 15334-WM Civil, came on for trial before the Honorable Wm. C. Mathes, United States District Judge, presiding, sitting without a jury, on March 4, 1957, the plaintiff represented by his attorneys, Adams, Duque & Hazeltine, Burton and Zerwekh, by Bryant R. Burton and Joseph A. Zerwekh, Esquires, the defendant represented by Laughlin E. Waters, United States Attorney, Edward R. McHale, Assistant United States Attorney, Chief, Tax Division, Sidney J. Machtinger, Attorney, Internal Revenue Service, by Edward R. McHale, Esq., and joint stipulations of fact and exhibits having duly been introduced into evidence, and the case having been submitted, and the Court having examined the briefs and arguments

of the parties, now, being fully advised in the premises, finds as follows: [25]

Findings of Fact

I.

At all times herein mentioned, plaintiff was, and now is, a resident of the County of Los Angeles, State of California, United States of America, within the Sixth Internal Revenue Collection District of the State of California.

II.

At all times from and after the first day of July, 1943, and to and including October 31, 1949, Harry C. Westover was the duly appointed, qualified and acting Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California. On or about October 31, 1949, the said Harry C. Westover resigned as the Collector of Internal Revenue for said District. The said Harry C. Westover is the person to whom the sums sought to be recovered were paid.

III.

This is an action for the recovery of federal income taxes and interest for the calendar years 1945, 1946, and 1947, collected from plaintiff in the respective amounts of \$794.05 plus interest for the year 1945; \$3,302.73 plus interest for the year 1946, and \$4,553.55 plus interest for the year 1947. The Court has jurisdiction under the provisions of Title 28, U.S.C. § 1346(a)(1).

IV.

Prior to and during the early part of 1944, the Kanter family, consisting of Harry L. Kanter and Minnie Kanter, his wife, and their three adult children, Laurence V. Kanter, Jerome B. Kanter, and Ruth Kanter Wolins, operated a chain retail food and liquor business under the name of Shop 'N Save, a California corporation. The three children each owned 6.81 per cent of the stock; the father owned 13.31 per cent, and the mother owned the remaining 66.26 per cent.

V.

During the early part of 1944, the stockholders agreed to [26] terminate the corporation and form a limited partnership to conduct the identical business then being conducted in corporate form. At the same time, Minnie Kanter decided to make a gift of a portion of her interest in the business to each of her children in order to reduce the taxes that her children would have to pay on the income of the proposed gift by her. Minnie Kanter established a trust of 6.81 per cent interests for each of her children. No business purpose existed for the gifts and trusts created thereby, and the trust medium, as opposed to outright gifts, was employed in order to reduce the income taxes that the children would have to pay on the income from the property gifted to them. In all respects as to the mother the gifts were valid, Minnie Kanter having effectively parted with all control over the property transferred in trust and having paid gift taxes on the transfers.

VI.

For convenience the trusts are herein referred to in terms of the chief beneficiary. The trustees of the Laurence V. Kanter trust were Laurence's sister, Ruth Kanter Wolins, and her husband, Albert Wolins. The trustees for the Jerome B. Kanter trust were his sister, Ruth Kanter Wolins, and his brother, Laurence. The trustees for the Ruth Kanter Wolins trust were her husband, Albert Wolins, and her brother, Laurence. Pursuant to the terms of the Ruth Kanter Wolins trust, Albert Wolins, Laurence V. Kanter and Jerome B. Kanter were "secondary beneficiaries" thereof, Albert Wolins possessing an interest in the trust property contingent on Ruth's death before January 2, 1960, and Jerome B. Kanter and Laurence V. Kanter having interest contingent on Ruth's death before January 2, 1960, without lawful issue or a lawful spouse surviving her. Likewise, in addition to being trustees of the Jerome B. Kanter trust, Ruth Kanter Wolins and Laurence V. Kanter were "secondary beneficiaries" thereof, each having interests contingent on Jerome B. Kanter's death before January 2, 1960, without lawful issue or lawful spouse surviving him. [27] Jerome B. Kanter and Ruth Kanter Wolins were likewise similar contingent and "secondary beneficiaries" of the Laurence V. Kanter trust.

VII.

The dissolution of the corporation, Shop 'N Save, and the organization of a limited partnership to succeed the corporation was within the contempla-

tion of the shareholders prior to the execution of these trusts by Minnie Kanter.

VIII.

On or about April 1, 1944, Shop 'N Save was partially liquidated and a limited partnership under the name of Kanter & Wolins was organized. On the partial liquidation of the corporation, the shares of capital stock held by the shareholders were cancelled in exchange for interests as limited partners in the assets and profits of Kanter & Wolins. The shares of capital stock which were to have been placed in the corpus of each trust executed by Minnie Kanter were thus cancelled and the value of the corpus of each trust was credited to the capital account of each trust on the books of the Kanter & Wolins partnership. No separate books were kept for the trusts. All transactions affecting the trusts were reflected only in the capital accounts of the trusts as limited partners on the books of the partnership.

IX.

A Certificate of Limited Partnership was executed and filed in the office of the County Recorder of Los Angeles County on April 1, 1944. This certificate reflected the agreement of Limited Partnership entered into on March 31, 1944. The general partners, the limited partners, their capital investments and their percentage ownership of capital and profits, as provided for in the partnership agreement, are as follows: [28]

General Partners	Capital Investment	Per Cent of Capital and Profits
Harry L. Kanter	\$ 31,058.00	13.31%
Laurence V. Kanter	15,910.00	6.81%
Albert L. Wolins	10,600.00	4.54%
Limited Partners		
Minnie F. Kanter	105,894.00	45.37%
Jerome B. Kanter	15,900.00	6.81%
Ruth Wolins	5,300.00	2.27%
Trust No. 1 (for Jerome B. Kanter)	15,900.00	6.81%
Trust No. 2 (for Laurence V. Kanter)	15,900.00	6.81%
Trust No. 3 (for Ruth Wolins)	15,900.00	6.81%
Trust No. 4 (for Sue Ellen Wolins)	1,060.00	.46%

Thus, each of the children of Harry and Minnie Kanter had, in his own right, as a general or limited partner, a 6.81% interest in the capital and profits of the Kanter & Wolins partnership (the combined interest of Ruth Kanter Wolins and her husband, Albert L. Wolins, totaling 6.81%). In addition, each of the children of Harry and Minnie Kanter was the beneficiary of a trust which had a 6.81% interest in the capital and profits of Kanter & Wolins. And each of the two trustees of each trust was also a general or limited partner in Kanter & Wolins in his own right in addition to being a trustee of a limited partner.

X.

The capital investment of each of the partners consisted of his stock in Shop 'N Save. The terms for which the limited partnership was to exist were from April 1, 1944, until March 31, 1954, and there-

after in five-year periods during the mutual agreement of the general partners. Although there was no restriction on the right [29] of a general partner to assign all or a portion of his interest in the partnership, Paragraph Eight of the partnership agreement expressly prohibited the assignment of the interest of a limited partner.

XI.

On or before March 15, 1946; March 15, 1947, and March 15, 1948, the trustees of the Laurence V. Kanter trust, the Jerome B. Kanter trust and the Ruth Wolins trust prepared and filed on behalf of such trusts fiduciary income tax returns for the calendar years 1945, 1946, and 1947, and reported in each fiduciary return each trust's 6.81 percentage of the distributable share of the Kanter & Wolins partnership income for these calendar years. Because such trust income was not distributed to the beneficiary, the return reported and showed a tax payable by the trust on account of such income. The income tax respecting such income was duly paid by the trustees of each of the trusts, to the then Collector of Internal Revenue, Los Angeles, California, for the Sixth Internal Revenue District of California.

XII.

During the years 1945, 1946, and 1947, the limited partnership filed partnership income tax returns on which it listed each of the aforementioned trusts as being limited partners, and as such chargeable with their distributable shares of the partnership profits.

During such years the trustees of the Laurence V. Kanter trust, the Jerome B. Kanter trust, and the Ruth Wolins trust, did not distribute any part of the trust income to the beneficiaries.

XIII.

After auditing the income tax returns of the respective trusts for the calendar years 1945, 1946, and 1947, the Commissioner of Internal Revenue determined that the income of the trusts of which each of these individuals was beneficiary was properly includible in their individual income and assessed deficiencies [30] against Laurence V. Kanter, Jerome B. Kanter and Ruth Kanter Wolins for each of the years, as follows:

	1945	1946	1947
Laurence V. Kanter	\$ 803.72	\$3,488.64	\$5,492.62
Jerome B. Kanter	375.32	2,461.23	3,624.74
Ruth Kanter Wolins	1,129.30	4,482.70	8,278.77

XIV.

The amounts set forth in the preceding paragraph, together with interest, were paid by the respective individuals and, on or about August 12, 1950, timely claims for refund, as follows, were filed seeking recovery of that portion of the deficiency plus interest which related to the inclusion in the beneficiaries' gross income of the income of the trust:

	1945	1946	1947	Total
Laurence V. Kanter	\$794.05	\$3,302.73	\$4,553.55	\$8,650.33
Jerome B. Kanter	375.32	1,956.41	2,751.18	5,082.91
Ruth Kanter Wolins	869.20	3,567.13	5,346.20	9,782.53

XV.

At the time of the execution of these trusts and during the years before this Court, the income tax on income from the property gifted by Minnie Kanter would have been taxed at a higher tax rate if distributed directly to Laurence Kanter, Jerome Kanter and Ruth Wolins than if taxed at the rates imposed against trusts.

XVI.

The trust agreements gave the trustees unlimited broad powers of investment and management of trust corpus. Paragraphs Third provided that terms of each trust were established at 15 years and 10 months with said term divided into three periods:

(1) "Period A" was to start March 3, 1944, and terminate on January 2, 1950;

(2) "Period B" was to start on January 3, 1950, and terminate on January 2, 1955; and [31]

(3) "Period C" was to start on January 3, 1955, and terminate on January 2, 1960.

All income from the trust during "Period A" was to be available for distribution in the trust estate and the accumulated income during that period "shall be distributed to the beneficiary hereof on the 2nd day of January, 1950." Similarly, with "Period B," "All net income from the Trust Estate during 'Period B' shall be accumulated and distributed to the beneficiary hereinafter named on the 2nd day of January, 1955." With respect to "Period C," all accumulated net income, together with all other income and principal of the Trust Estate, was

to be distributed on the 2nd day of January, 1960, the date on which the trust was to cease and terminate.

XVII.

Paragraphs Fifth gave the trustees discretion to distribute income to the beneficiary at any time as follows:

“In the sole and exclusive discretion of the Trustees the accumulated income may be paid to the beneficiary at any other time or times than set forth herein if in their opinion the said beneficiary does not have sufficient income from other sources to provide for his proper support, maintenance, comfort, education and recreation.”

XVIII.

The original value of the corpus of each trust as of March 3, 1944, was \$15,900.00. Between April 1, 1944, and January 2, 1950, the limited partnership income of each of the trusts was credited by the Kanter & Wolins partnership to each trust as follows:

March 31, 1945.....	\$2,075.39
March 31, 1946.....	6,881.59
March 31, 1947.....	8,107.78
March 31, 1948.....	7,622.31
March 31, 1949.....	9,514.48

As of January 2, 1950, the capital account of each trust as reflected on the books of Kanter & Wolins after deducting expenses of administering each trust was as follows:

Jerome B. Kanter, Trust No. 1	\$45,100.57
Laurence V. Kanter, Trust No. 2	43,958.11
Ruth Wolins, Trust No. 3	43,729.66

Despite the express provisions of Paragraph Third of the trust directing that undistributed income accumulated between March 3, 1944, and January 2, 1950, "shall be distributed to the beneficiary hereof on the 2nd day of January, 1950," the income of the trusts was never distributed but was credited to the capital accounts of the trusts and retained in the Kanter & Wolins partnership.

XIX.

On January 9, 1950, the Kanter & Wolins partnership exchanged substantially all of its assets for all of the common stock in a corporation newly formed by the partnership called McDaniel's Markets. The total capital of McDaniel's Markets per its books was \$416,810.00, representing the value of the assets of the Kanter & Wolins partnership transferred to the corporation.

XX.

On May 31, 1950, the partnership books were posted to show the investment of \$416,810.78 of partnership net worth in the common stock of the corporation which reflected the following investment by the trusts in said common stock:

Jerome B. Kanter, Trust No. 1	\$42,456.11
Laurence V. Kanter, Trust No. 2	41,313.65
Ruth Wolins, Trust No. 3	41,085.20

This left the following balances in said limited partners' accounts invested in the remaining assets of the partnership: [33]

Jerome B. Kanter, Trust No. 1.....	\$3,364.56
Laurence V. Kanter, Trust No. 2.....	3,364.56
Ruth Wolins, Trust No. 3.....	3,364.56

Between January 10, 1950, and January 10, 1956, McDaniel's Markets incurred a total operating deficit of \$247,619.93, which arose as follows:

Net loss fiscal year 1951.....	(\$ 23,921.08)
Net loss fiscal year 1952.....	(194,707.19)
Net profit fiscal year 1953.....	36,990.24
Net profit fiscal year 1954.....	95,503.62
Net loss fiscal year 1955.....	(76,506.89)
Net loss fiscal year 1956.....	(84,978.23)

Deficit in surplus account as
of May 31, 1956.....(\$247,619.93)

XXI.

Between January 2, 1950, and January 2, 1955, the limited partnership income or loss for each of the trusts was credited by the Kanter & Wolins partnership to the trusts as follows:

March 31, 1950.....	(\$2,569.82)
March 31, 1951.....	1,210.25
March 31, 1952.....	21.78
March 31, 1953.....	(136.19)
March 31, 1954.....	207.58

XXII.

As of January 2, 1955, the capital account of each trust as reflected on the books of the Kanter & Wolins partnership after deducting expenses of administering each trust was as follows:

Jerome B. Kanter, Trust No. 1.....	\$47,198.73
Laurence V. Kanter, Trust No. 2.....	46,056.27
Ruth Wolins, Trust No. 3.....	45,827.82

XXIII.

No dividends on the common stock have ever been declared [34] by McDaniel's Markets and the Kanter & Wolins partnership continues to hold all the common stock in the corporation.

XXIV.

Preferred stock was issued by the corporation in order to obtain outside capital and at various dates the following amounts of preferred stock were outstanding:

May 31, 1951.....	\$125,000
May 31, 1952.....	180,200
May 31, 1953.....	181,275
May 31, 1954.....	181,275
May 31, 1955.....	181,275
May 31, 1956.....	240,225

Preferred stock dividends were paid as follows for the years ending May 31:

May 31, 1951.....	\$ 6,250.00
May 31, 1952.....	7,856.96
May 31, 1953.....	10,876.50

May 31, 1954.....	10,876.50
May 31, 1955.....	10,876.50

XXV.

The creation of the trusts by Minnie Kanter for her three children of portions of her interest in the family business did not provide the business with any additional capital; it was a tax minimization device in that it shifted ownership of a part of the capital already in the business from the mother to her children and was designed to prevent the inclusion of the income therefrom in that of the children. Family motives impelled the gifts in trusts.

XXVI.

The beneficiaries of the trusts had unlimited power and control over the corpus of the trust because of the reciprocal nature of the trusts—the lack of independent trustees, the close familial, business and trust relationship of the trustees with each other, and [35] the unlimited powers of invasion of the corpus.

XXVII.

From the inception of the partnership until the formation of the corporation in 1950, none of the assets was ever withdrawn from the limited partnership and no part of the earnings which were accumulated was ever invested in any other type of investment.

XXVIII.

The mandatory directions of the trusts to distribute the accumulation at the end of any of the

five-year periods were never complied with by the trustees.

XXIX.

The trustees permitted the corpus of the trusts to remain in the limited partnership which in 1950 acquired common stock in the corporation despite losses in four of the next six years amounting to a net deficit of \$247,619.93.

XXX.

The trustees of the trusts exercised no independent fiduciary judgment in permitting the bulk of the corpus of the trusts to remain in a business that was losing money, in permitting the subordination of the investment to new issues of preferred stock, and in permitting the bulk of the investment to remain in common stock which failed to pay dividends.

XXXI.

All conclusions of law which are or are deemed to be findings of fact are hereby incorporated and found as findings of fact.

Conclusions of Law

And from the foregoing facts the Court concludes as follows:

I.

The Court has jurisdiction of this controversy and of the parties hereto.

II.

The plaintiff has failed to sustain his burden of proving [36] that he has overpaid his income taxes for the years 1945, 1946, and 1947.

III.

The undistributed income of the Laurence V. Kanter trust was the income of Laurence V. Kanter as earned by the Kanter & Wolins Partnership and was properly taxed to the plaintiff rather than to the trust.

IV.

Laurence V. Kanter, beneficiary of the Laurence V. Kanter trust, had such control over the corpus of the trust as to make the income therefrom his own.

V.

The three trusts established by Minnie Kanter lacked substance and reality, had no business purpose, existed solely for the purpose of tax avoidance, and were not valid under the income tax laws.

VI.

Laurence V. Kanter was as much the owner of the income paid by the Kanter & Wolins Partnership to the Laurence V. Kanter trust as he was with respect to the income paid directly to him as a limited partner.

VII.

Defendant is entitled to judgment that the plaintiff take nothing by his complaint; that the action be dismissed with prejudice, and that it have its costs in its behalf incurred.

VIII.

All findings of fact which are or are deemed to be conclusions of law are hereby incorporated and concluded as conclusions of law.

Judgment

In accordance with the foregoing findings of fact and conclusions of law, It Is Hereby Ordered, Adjudged and Decreed: [37]

That the plaintiff take nothing by his complaint, that the above-entitled action be dismissed with prejudice, and that the defendant have judgment for and recover from plaintiff the amount of defendant's costs, to be taxed by the Clerk of this Court in the sum of \$20. (8/2/57.) No obj.

Dated: This 26th day of July, 1957.

/s/ WM. C. MATHES,
United States District Judge.

Affidavit of Service by Mail attached.

Lodged July 17, 1957.

[Endorsed]: Filed July 26, 1957.

Entered July 29, 1957. [38]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To the Plaintiff, Laurence V. Kanter, and Adams, Duque & Hazeltine, and Burton & Zerwekh, by Bryant R. Burton, Esq., His Attorneys:

You, and Each of You, Will Please Take Notice that:

On July 29, 1957, Judgment was docketed and entered in the above-entitled case.

Dated: July 30, 1957.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Assistant United States At-
torney, Chief, Tax Division;

/s/ EDWARD R. McHALE,
Attorneys for Defendant,
United States of America.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 30, 1957. [40]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT
OF APPEALS UNDER RULE 73 (B)

Notice is hereby given that Laurence V. Kanter, plaintiff in the above-entitled action, hereby appeals to the Court of Appeals for the Ninth Circuit from the final judgment entered in said action on July 29, 1957, in favor of defendant and against the plaintiff.

Dated: September 18, 1957.

ADAMS, DUQUE &
HAZELTINE,

By /s/ BRYANT R. BURTON,
Attorneys for Plaintiff.

[Endorsed]: Filed September 19, 1957. [42]

PLAINTIFF'S EXHIBIT 1-A

Declaration of Trust

This Declaration of Trust entered into this 3rd day of March, 1944, by and between Minnie F. Kanter, as Trustor, and Albert L. Wolins and Ruth Wolins, herein designated as Trustees, all of the County of Los Angeles, State of California,

Witnesseth:

That Trustor has conveyed, transferred, assigned and delivered to the Trustees all that certain real and personal property described in Exhibit "A" (attached hereto and made a part hereof), which said property together with any other property which the Trustor or others may hereafter transfer or cause to be transferred to the Trustees to be held under this Trust is designated in this Declaration of Trust as the "Trust Estate."

That no consideration was or will be given by the Trustees for the transfer to them of any of the Trust Estate; that Trustees accept such title to the Trust Estate as is conveyed to them hereunder without liability or responsibility for the condition or validity of such title and the same has been and will be transferred to the Trustees, in trust, with power of sale, for the purpose of holding, managing, controlling and disposing of same and all income or other proceeds derived therefrom only in the manner and for the uses and purposes and upon the terms, trusts and conditions as hereinafter provided, namely:

First: Trustor cannot change, amend or revoke this Trust or any part hereof, or withdraw any of the property therefrom and has absolutely no control over the same whatsoever, except that Trustor may add additional property to said Trust Estate, which shall be subject to all the terms of this [43] Trust.

Second: The Trustees may hold, maintain or continue any securities, properties or investments received by it hereunder, whether or not the same be of the character permitted by law for investment of Trust Funds, or in their sole, absolute and uncontrolled discretion may grant, bargain, sell, convey, exchange, convert, lease for terms either within or beyond the duration of this Trust, grant for like terms the right to mine or drill for and remove therefrom, gas, oil and/or other minerals, assign, partition, divide, subdivide, improve, loan, reloan, invest and reinvest the Trust Estate in common stocks, preferred stocks, bonds, notes, real or personal property, or other securities and investments, whether or not permitted by law for the investment of Trust Funds, take and hold securities or other property in their own name or in the name of their nominee without disclosing any fiduciary relation, effect insurance, including public liability insurance, at the expense of the Trust Estate, of such nature and in such form and amounts as the Trustees deem advisable, borrow money for any Trust purpose, hypothecate the Trust Estate, or any part thereof, and/or replace, renew and/or

extend any encumbrance thereon, upon such terms and conditions and by such means of security as may be determined upon by the Trustees, including the conveyance of any real property or the assignment, transfer and/or delivery of any personal property, to such person as they shall select, for the purpose of executing and delivering the note, mortgage, deed of trust or other instrument to evidence or secure any such debt, and of reconveying or retransferring such property to the Trustees subject thereto, without causing any suspension or interruption of the Trusteeship hereunder, and generally in all respects manage the Trust Estate in such manner and upon such terms and conditions as to said Trustees, in their absolute and uncontrolled [44] discretion, may seem best, and may do all of such other things and exercise and execute each and every right, power and privilege in connection with or with relation to the Trust Estate, as could be done, exercised and/or executed by an individual holding and owning said property in absolute and unconditional ownership, including, without limiting the foregoing, the rights as respects stocks and bonds of voting, giving of proxies, payment of calls for assessments, exchanging securities, selling or exercising stock subscription or conversion rights, participating in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements or voting trusts and assenting to corporate sales or other acts. The Trustees are authorized to disclose the provisions of this Declaration of Trust

whenever, in their discretion, such disclosure will facilitate the operation of the Trust.

Third: For the purposes of this paragraph it is understood that the term of this Trust shall be 15 years and 10 months. Said term shall be divided into three periods.

a. "Period A" shall start March 3, 1944 and terminate on January 2, 1950.

b. "Period B" shall start on January 3, 1950, and terminate on January 2, 1955.

c. "Period C" shall start on January 3, 1955, and terminate on January 2, 1960.

After paying or reserving sufficient money to pay any expenses of management of the Trust Estate and administering this Trust, including the compensation for the services of the Trustees, all income from the Trust Estate during "Period A" shall be held in said Trust Estate as undistributed income and shall be available for distribution and shall be distributed to the beneficiary hereof on the 2nd day of January, 1950. All net income from the Trust [45] Estate during "Period B" shall be accumulated and distributed to the beneficiary hereinafter named on the 2nd day of January, 1955. All net income from the Trust Estate during "Period C" shall be accumulated as undistributed income in said Trust Estate and distributed to the beneficiary hereinafter named, together with all other income and principal of this Trust Estate, on the 2nd day of January, 1960.

Fourth: The beneficiary of this Trust shall be Laurence V. Kanter. Anything herein contained to the contrary notwithstanding, this Trust shall cease and terminate upon the 2nd day of January, 1960, or upon the death of the beneficiary, whichever date shall first occur. If, upon the 2nd day of January, 1960, the beneficiary hereof shall be alive, the principal and net accumulated income, shall be paid to Laurence V. Kanter, beneficiary herein. In the event that Laurence V. Kanter, the beneficiary herein dies prior to the 2nd day of January, 1960, leaving lawful issue or lawful spouse him surviving, then the principal and the accumulated income shall be distributed by the Trustees to said lawful issue and lawful spouse, share and share alike, at a time after said date of death as in the sole discretion of the Trustees shall be proper. In the event that the beneficiary herein shall die prior to the 2nd day of January, 1960, without leaving a lawful spouse or issue him surviving, then the principal and the accumulated income shall be distributed by the Trustees to Ruth Wolins and Jerome B. Kanter or to the survivor of them (secondary beneficiaries), share and share alike. In the event of such occurrence and if either of the "secondary beneficiaries" shall have predeceased the beneficiary hereof, leaving lawful spouse or issue surviving the said "secondary beneficiaries," the said lawful spouse or issue shall receive the share of the "secondary beneficiary," share and share alike. In the event that the beneficiary and both "secondary beneficiaries" [46] shall die prior to the 2nd day of January, 1960,

leaving no lawful spouse or issue surviving any of them, then upon the death of the beneficiary the principal and accumulated income shall be distributed to the heirs-at-law of the beneficiary, provided, however, that in no event shall any of the principal or income of this Trust Estate at any time or ever be distributor to the Trustor. Any distribution of principal hereunder to a minor may be made to the guardian of the estate of such minor.

Fifth: In the sole and exclusive discretion of the Trustees the accumulated income may be paid to the beneficiary at any other time or times than set forth herein if in their opinion the said beneficiary does not have sufficient income from other sources to provide for his proper support, maintenance, comfort, education and recreation.

Sixth: No interest of any beneficiary in this Trust, nor any part of such interest, shall in any event be subject to sale, assignment, hypothecation, or transfer by any beneficiary, nor shall the principal of the Trust Estate hereunder, or the income arising therefrom be liable for any debt of any beneficiary, or subject to any judgment rendered against any beneficiary, or to the process of any court in aid of execution of any judgment so rendered, and all of the income and/or principal under the Trust shall be transferable, payable and deliverable only to the beneficiaries designated hereunder at the times entitled to take same under the terms of this Trust, and the personal receipts of said designated beneficiaries shall be conditions precedent to

the payment or delivery of the same by said Trustees to such beneficiaries. This provision shall not restrict any authority of the Trustees to use and disburse funds for the maintenance and education of a beneficiary or to disburse funds to a guardian as herein provided.

Seventh: In the event the Trustees are required to [47] distribute any moneys hereunder to, or use, or expend such moneys for the benefit, support or maintenance of a minor, or an incompetent person, each such distribution or expenditure may, at the sole discretion of the Trustees, be made without the intervention of any court, or the Trustees may distribute to the guardian having the legal custody of such minor or incompetent and the voucher of such guardian shall be full acquittance to the Trustees for any sums so distributed; but the Trustees may, in their discretion, require such reports and take such steps as it may deem requisite to assure and enforce the due application of such money to the purposes aforesaid.

Eighth: If the whole or any part of the Trust Estate, or the proceeds or avails thereof, shall become liable for the payment of any tax, charge or assessment which said Trustees shall be required to pay, said Trustees shall have the full power and authority, without previous notice to or demand upon any person, to pay such tax, charge or assessment, any sums so paid which are a charge against any beneficiary hereunder shall be deducted from the interest of the beneficiary so liable. Estate and

inheritance taxes so paid by the Trustee shall be charged to principal. Other taxes shall be charged to income, provided, however, that any tax levied upon profit or gain which inures to the benefit of principal shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority. Improvement assessments shall be charged to principal and maintenance assessments shall be charged to income. The foregoing provisions shall not be construed as imposing upon this Trust Estate any liability for any such succession, inheritance or other death taxes or duties or as requiring it to contribute toward the payment thereof.

Ninth: The Trustees shall amortize premiums or accumulate discounts. All dividends accruing on corporate stock and [48] payable in the shares of the corporation itself, and all rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of stock in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All dividends payable otherwise than in the shares of the corporation itself shall be deemed income, except that amounts paid on corporate stock upon liquidation of the assets of the corporation as a return of the original investment and such part of dividends as is designated by the corporation as a return of capital or distribution of assets shall be deemed principal. Where the Trustees shall have the option of receiving a dividend either in cash or in

the shares of the declaring corporation, it shall be considered a cash dividend irrespective of the choice made by the Trustees. Unless otherwise specifically provided in this Declaration of Trust, the Trustees shall have absolute discretion in determining what is principal or income and what shall be charged or credited to either, and their judgment shall bind everyone beneficially interested hereunder. The Trustees may rely upon the statement of the paying corporation as to whether dividends are paid from profits or earnings or are a return of capital or a distribution of assets, and as to any other fact relevant hereunder, concerning the source or character of dividends or distributions of corporate assets.

Tenth: Any instrument properly executed hereunder by the Trustees, and the contents thereof, shall be binding on all parties hereto and all beneficiaries hereunder. No person paying money to the Trustees need see to the application of the money so paid.

Eleventh: Upon any division or distribution of the Trust Estate, in whole or in part, the Trustees may assign, transfer or deliver to the person, share or department, then entitled thereto, [49] any part of the Trust Estate or an undivided interest in the Trust Estate, or any portion thereof, at such valuation as the Trustees may establish as the then fair market value, or may, within a reasonable time, convert the Trust Estate, or any portion thereof, into cash, distributing the net proceeds to such person,

share or department, all in the absolute discretion of the Trustees.

Twelfth: The Trustees herein shall be joint Trustees and their joint signatures shall be required for the performance of any acts hereunder. In the event any one Trustee refuses to act or for any other reason cannot act, then the remaining Trustee shall act alone. In the event that both Trustees cannot, or will not act, then Bank of America, National Trust & Savings Association shall be appointed as Trustee and shall succeed to all the rights, powers, duties and obligations herein imposed. The resigning Trustee or Trustees shall transfer to the successor hereunder the entire estate then remaining in this Trust.

Thirteenth: From the income and/or principal of the Trust Estate the Trustees shall pay and discharge all expenses incurred in the administration of this Trust and protection of this Trust against legal or equitable attack, including attorney's fees and reasonable compensation for their services as Trustees, which compensation is agreed to be as follows:

An annual fee equal to 2% of the annual income of this Trust.

All expenses such as costs of preparation and filing of tax returns, furnishing of statements and such other services not expressly provided for shall be paid for from the income of this Trust. [50]

In witness whereof the Trustees have caused their hands to be affixed hereto this 3rd day of March, 1944.

/s/ ALBERT L. WOLINS,
Trustee.

/s/ RUTH WOLINS,
Trustee.

The undersigned Trustor does hereby certify that she has read the foregoing Declaration of Trust and that the same fully and accurately sets out the terms, trusts and conditions under which the Trust Estate therein described is to be held, managed and disposed of by the Trustees therein named and does hereby approve, ratify and confirm the said Declaration of Trust in all particulars.

Dated March 3, 1944.

/s/ MINNIE F. KANTER.

State of California,
County of Los Angeles—ss.

On this 3rd day of March, 1944, before me Max Feingold, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Minnie F. Kanter, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

/s/ MAX FEINGOLD,

Notary Public in and for Said
County and State. [51]

Exhibit "A"

One Hundred Fifty (150) shares of the Common Stock of Shop 'N Save, a California corporation.

* * *

The above shares were cancelled and delivered up in return for a 6.81% undivided interest as a limited partner in Kanter & Wolins, a limited partnership.

Admitted in evidence March 4, 1957.

PLAINTIFF'S EXHIBIT I-D

Certificate of Limited Partnership

This Certificate of Limited Partnership is entered into in duplicate and is executed in accordance with the provisions of the Civil Code of the State of California, Sections 2477 to 2510, inclusive.

One: The name of the Limited Partnership shall be Kanter & Wolins.

Two: The character of the business of this Limited Partnership shall be the conducting of retail food markets.

Three: The principal place of business of this Limited Partnership shall be 4756 Whittier Boulevard, Los Angeles, California, and such other place or places as the general partners may from time to time determine.

Four: The names and residences of each of the members of this Limited Partnership are as follows:

Harry L. Kanter, general partner, 10100 Sunset Boulevard, Los Angeles, California;

Laurence V. Kanter, general partner, 10100 Sunset Boulevard, Los Angeles, California;

Albert L. Wolins, general partner, 10100 Sunset Boulevard, Los Angeles, California;

Minnie F. Kanter, limited partner, 10100 Sunset Boulevard, Los Angeles, California;

Jerome B. Kanter, limited partner, 10100 Sunset Boulevard, Los Angeles, California;

Ruth Wolins, limited partner, 10100 Sunset Boulevard, Los Angeles, California;

Albert L. Wolins, Trustee for Sue Ellen Wolins, limited partner, 10100 Sunset Boulevard, Los Angeles, California, Trust No. 4;

Ruth Wolins and Laurence V. Kanter, Trustees for Jerome B. Kanter, limited partner, Trust No. 1, 10100 Sunset Boulevard, Los Angeles, California; [53]

Albert L. Wolins, Ruth Wolins, Trustees for Laurence V. Kanter, limited partner, Trust No. 2, 10100 Sunset Boulevard, Los Angeles, California;

Albert L. Wolins and Laurence V. Kanter, Trustees for Ruth Wolins, limited partner, Trust No. 3, 10100 Sunset Boulevard, Los Angeles.

Five: This partnership shall exist for a period of ten years and may be renewed from time to time thereafter by the written consent of the partners.

Six: The limited partners shall contribute cash and/or fixtures and/or equipment and/or merchandise and/or real property and improvements thereon and such other real or personal property which has already been evaluated and in the amounts set opposite their names.

Minnie F. Kanter.....	\$105,894.00
Jerome B. Kanter.....	15,000.00
Ruth Wolins	5,300.00
Trust No. 1.....	15,900.00
Trust No. 2.....	15,900.00
Trust No. 3.....	15,900.00
Trust No. 4.....	1,060.00

Seven: It is agreed that a limited partner's contribution shall be returned upon the dissolution of this partnership or upon a six months' written notice at any time prior thereto.

Eight: The following partners shall be paid the following sums of money annually for their services

on behalf of the partnership, which sums, for the purpose of determining profits to be distributed to the partners, shall be deemed an expense of doing business, to-wit:

Harry L. Kanter.....	\$20,000.00
Laurence V. Kanter.....	8,000.00
Jerome B. Kanter.....	4,000.00
Albert L. Wolins.....	20,000.00

Nine: All profits remaining in the partnership after the payment of the salaries set up in Paragraph Eight shall be [54] distributed at the end of each fiscal year to the partners (general and limited) in proportion to their capital investment in this partnership.

Ten: No limited partner may substitute an assignee as a contributor in his place and stead in this partnership. No additional partners, either limited or general, may be admitted to this partnership.

Eleven: In the event of dissolution of this limited partnership, the limited partners shall receive their full contribution plus increases thereon before the general partners shall receive part of their contributions herein. In the event of any loss exceeding the investment of the general partners herein, the limited partners shall share the remaining loss pro-rata up to the aggregate of their respective contributions as limited partners. No limited partner shall be required to share in the losses of this limited partnership in any amount to ex-

ceed in the aggregate the amount of his or her respective contributions.

Twelve: This partnership shall terminate immediately upon the death, retirement, incompetency or insanity of any general partner.

Thirteen: The terms of the agreement of limited partnership entered into contemporaneously herewith are binding upon the parties hereto.

Dated this 31st day of March, 1944.

/s/ HARRY L. KANTER,

/s/ LAURENCE V. KANTER,

/s/ ALBERT L. WOLINS,

/s/ MINNIE F. KANTER,

/s/ JEROME B. KANTER,

/s/ RUTH WOLINS,

/s/ ALBERT L. WOLINS,

Albert L. Wolins, Trustee for Sue Ellen Wolins,
Trust No. 4.

/s/ RUTH WOLINS,

/s/ LAURENCE V. KANTER,

Ruth Wolins and Laurence V. Kanter, Trustees
for Jerome B. Kanter, Trust No. 1.

/s/ ALBERT L. WOLINS,

/s/ RUTH WOLINS,

Albert L. Wolins and Ruth Wolins, Trustees for
Laurence V. Kanter, Trust No. 2.

/s/ ALBERT L. WOLINS,

/s/ LAURENCE V. KANTER,

Albert L. Wolins and Laurence V. Kanter, Trustees for Ruth Wolins, Trust No. 3.

State of California,

County of Los Angeles—ss.

Before me, Max Feingold, Notary Public in and for the County of Los Angeles, State of California, on the 31st day of March, 1944, personally appeared the above-named persons, who, in their own and in their representative capacities acknowledged the above Certificate of Limited Partnership and who stated to me that they were signing and executing the said Certificate of Limited Partnership in compliance with the Civil Code of the State of California, relating thereto and who further swear that the contents of said Certificate of Limited Partnership are true and correct, except where the same is alleged on information and belief.

/s/ MAX FEINGOLD,

Notary Public in and for the County of Los Angeles, State of California.

Admitted in evidence March 4, 1957. [56]

EXHIBIT I-E

Agreement of Limited Partnership

This Agreement of Limited Partnership entered into this 31st day of March, 1944, by and between Harry L. Kanter, Laurence V. Kanter, Albert L. Wolins, Minnie F. Kanter, Jerome B. Kanter, Ruth Wolins, Albert L. Wolins, Trustee for SueEllen Wolins, Trust No. 4, Ruth Wolins and Laurence V. Kanter, Trustees for Jerome B. Kanter, Trust No. 1, Albert L. Wolins and Ruth Wolins, Trustees for Laurence V. Kanter, Trust No. 2, and Albert L. Wolins and Laurence V. Kanter, Trustees for Ruth Wolins, Trust No. 3, all of the County of Los Angeles, State of California,

Witnesseth:

One: The parties do hereby form each with the other a limited partnership under the Uniform Limited Partnership Act of the State of California contained in Sections 2477 to 2510, inclusive, of the Civil Code of the State of California, to carry on the business of retail food and liquor markets at the following addresses, among others:

3250 Glendale Boulevard, Los Angeles, California,
4756 Whittier Boulevard, Los Angeles, California,
2047 Del Mar Avenue, Wilmar, California,
1558 Valley Boulevard, Rosemead, California,
706 Las Tunas Drive, San Gabriel, California,

208 East Valley Boulevard, Alhambra, California,

2532 West Valley Boulevard, Alhambra, California,

420 West Main Street, El Monte, California,

108 Pamona Boulevard, Baldwin Park, California,

or such other places as the general partners may from time to time designate.

Two: This limited partnership shall be known as Kanter & Wolins.

Three: The general partners shall be the following persons who shall contribute as a general investment the sums set opposite their names: [57]

Harry L. Kanter, 10100 Sunset Boulevard, Los Angeles, California...\$31,058.00

Laurence V. Kanter, 10100 Sunset Boulevard, Los Angeles, California 15,900.00

Albert L. Wolins, 10100 Sunset Boulevard, Los Angeles, California.. 10,600.00

It is understood that said investments may be contributed in cash or in property. If in property, said property shall be evaluated as of the present fair market value. The general partners shall be entitled to share in the profits and losses of this partnership in the proportions set opposite their names.

Harry L. Kanter.....	13.31%
Laurence V. Kanter.....	6.81%
Albert L. Wolins.....	4.54%

But if the limited partners' contributions shall have been exhausted by the applications of losses, the general partners shall each be jointly and severally liable for losses occurring thereafter in the proportions that their capital investments shall bear to each other.

Four: The limited partners shall be the following, whose limited contributions are set opposite their names.

Minnie F. Kanter, 10100 Sunset Boulevard, Los Angeles, California	\$105,894.00
Jerome B. Kanter, 10100 Sunset Boulevard, Los Angeles, California	15,900.00
Ruth Wolins, 10100 Sunset Boule- vard, Los Angeles, California....	5,300.00
Ruth Wolins and Laurence V. Kan- ter, Trustees for Jerome B. Kan- ter, Trust No. 1, 10100 Sunset Boulevard, Los Angeles, Cali- fornia	15,900.00
Albert L. Wolins and Ruth Wolins, Trustees for Laurence V. Kanter, Trust No. 2, 10100 Sunset Boule- vard, Los Angeles, California....	15,900.00

Albert L. Wolins and Laurence V. Kanter, Trustees for Ruth Wolins, Trust No. 3, 10100 Sunset Boule- vard, Los Angeles, California....	15,900.00
Albert L. Wolins, Trustee for Sue- Ellen Wolins, 10100 Sunset Boule- vard, Los Angeles, California....	1,060.00

Each limited partner may contribute his or her investment in the form of cash or property. If in property, said property shall be evaluated at the present fair market value. All limited partners shall share in the profits and losses of this limited partnership in the proportions set opposite their respective names.

Minnie F. Kanter.....	45.37%
Jerome B. Kanter.....	6.81%
Ruth Wolins	2.27%
Albert L. Wolins, Trustee for Sue- Ellen Wolins, Trust No. 4.....	.46%
Ruth Wolins and Laurence V. Kanter, Trustees for Jerome B. Kanter, Trust No. 1	6.81%
Albert L. Wolins and Ruth Wolins, Trustees for Laurence V. Kanter, Trust No. 2.....	6.81%
Albert L. Wolins and Laurence V. Kan- ter, Trustees for Ruth Wolins, Trust No. 3	6.81%

but the share of any limited partner in the losses shall not, in any event, exceed in the aggregate the amount of his or her respective contributions.

Six: The term for which this limited partnership shall exist is the period from 12:01 o'clock a.m. Saturday, April 1, 1944, until midnight, March 31, 1954, and thereafter in five-year periods during the mutual agreement of the general partners.

Seven: The contribution of each limited partner increased by gains credited but not withdrawn, or decreased by losses [59] as determined under Paragraph Five hereof is to be returned upon the termination of the limited partnership in accordance with the terms of Paragraph Five hereof or upon any earlier dissolution of this limited partnership caused by the death, retirement, insanity or incompetency of a general partner, provided that at such time all liabilities of the partnership except liabilities to general partners and to limited partners on account of their contributions shall have been paid and that there shall then be real property of the partnership sufficient to make such return to the limited partners. If the property thus remaining shall not be sufficient to repay in full all of the partners, general and limited, their contributions adjusted to reflect accumulated gains or losses as above provided, then each of the partners shall receive his or her respective contribution adjusted as provided in the Certificate of Limited Partnership recorded and filed as required by the statutes. In the event that the limited partners shall receive less than their adjusted partnership contributions, they shall have no further claim against the general partners for the return of the remaining balance of their contributions or credited gains.

Eight: The interest of the limited partners herein shall not be assignable but the legal representative of any deceased limited partner may have the rights and duties conferred upon him by the death of a limited partner as provided in the laws of the State of California appertaining thereto.

Nine: True, just and correct books of account shall be kept in which there shall be entered all of the transactions of or relating to the partnership or to business.

Ten: The general partners shall be co-managers of the business of this limited partnership. For their services on behalf [60] of this limited partnership they shall receive the following annual salaries paid in such installments and at such times as they deem proper:

Harry L. Kanter.....	\$20,000.00
Laurence V. Kanter.....	8,000.00
Albert L. Wolins.....	20,000.00

These salaries are to be treated as an expense of the business in the ascertainment of profits for distribution among the partners and said parties agree to devote their entire time, skill and effort to their duties as co-managers of this partnership except for such period as they or any of them may be prevented by illness or other emergencies or as the general partners may agree upon. The general partners agree that they will not, directly or indirectly, use the partnership name except for the legitimate pur-

poses of the partnership without the express permission of the other general partners in writing first had and obtained. It is understood and agreed that Jerome B. Kanter, a limited partner herein, is presently a member of the armed forces of the United States and shall receive as additional compensation (to be classed as an expense of business for these purposes) the sum of \$4,000.00 per year while in the armed forces.

Eleven: In the event of the death, retirement, insanity or incompetency of any of the general partners during the continuance of this agreement or any renewal or extension thereof, an accounting shall forthwith be taken of the assets and liabilities of the partnership as of the last day of the calendar month preceding the death of said general partner. For the purpose of determining the book value of the general partner's interest, good will shall not be used as an asset. The surviving general [61] partners within sixty (60) days after date of death, retirement, insanity or incompetency of any other general partner shall notify the legal representative of such partner of his or their intention to purchase the aforesaid general partner's interest determined as above outlined. Within one hundred eighty (180) days after date of death, retirement, insanity or incompetency the surviving general partners or any of them who exercise the above option shall pay to the legal representative of the aforesaid general partner the value of the interest of said general partner in this partnership. In the event that none

of the surviving general partners desire to purchase the said interests, the assets of the partnership shall be liquidated at either public or private sale under the supervision of the surviving general partners and the legal representatives of the other general partners and all funds realized by such sale shall be distributed in accordance with the laws of the State of California pertaining thereto.

Twelve: The general partners shall start such bank accounts in such banks as they deem necessary and proper. All checks, drafts, notes and other evidences of indebtedness may be signed by any one of the general partners.

Thirteen: This Agreement shall be binding upon the heirs, administrators, legal representatives and assigns of each of the parties hereto.

In witness whereof, the parties hereto have hereunto set their hands this day and year first above written.

/s/ HARRY L. KANTER,
General Partner.

/s/ LAURENCE V. KANTER,
General Partner. [62]

/s/ ALBERT L. WOLINS,
General Partner.

/s/ MINNIE F. KANTER,
Limited Partner.

/s/ JEROME B. KANTER,
Limited Partner.

/s/ RUTH WOLINS,
Limited Partner.

/s/ RUTH WOLINS,
/s/ LAURENCE V. KANTER,
Ruth Wolins & Laurence V. Kanter, Trustees for
Jerome B. Kanter, Limited Partner, Trust
No. 1.

/s/ ALBERT L. WOLINS,
/s/ RUTH WOLINS,
Albert L. Wolins & Ruth Wolins, Trustees for
Laurence V. Kanter, limited partner, Trust
No. 2.

/s/ ALBERT L. WOLINS,
/s/ LAURENCE V. KANTER,
Albert L. Wolins & Laurence V. Kanter, Trustees
for Ruth Wolins, Limited Partner, Trust No. 3.

/s/ ALBERT L. WOLINS,
Albert L. Wolins, Trustee for SueEllen Wolins,
Limited Partner, Trust No. 4

Admitted in evidence March 4, 1957. [63]

DEFENDANT'S EXHIBIT A

United States District Court for the Southern
District of California, Central Division

No. 15350-WM Civil

LAURENCE V. KANTER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 15399-WM Civil

RUTH WOLINS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 15534-WM Civil

JEROME B. KANTER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

SUPPLEMENTAL STIPULATION OF FACTS

It is hereby further stipulated, in addition to
the facts stipulated in that Stipulation of Facts

filed on February 4, 1957, by and between the parties hereto through their respective counsel, without prejudice to their right to object to the materiality or relevancy of any of the facts agreed to, as follows: [64]

XI.

Minnie Kanter during the early part of 1944 desired to make a gift of a portion of her interest in Shop 'N Save to her three children. Her sole purpose in executing these trusts, rather than in making outright gifts of property to her children, was to reduce the taxes that her children would have to pay on the income from the property gifted by her.

XII.

At the time of execution of these trusts and during the years before this Court the income tax on income from the property gifted by Minnie Kanter would have been taxed at a higher tax rate if distributed directly to Laurence Kanter, Jerome Kanter, and Ruth Wolins than if taxed at the rates imposed against trusts.

XIII.

The dissolution of Shop 'N Save and the organization of a limited partnership under the name of Kanter and Wolins was within the contemplation of the shareholders of Shop 'N Save prior to the execution of these trusts by Minnie Kanter. Since the inception of the trusts and to date, the corpus of the trusts has consisted solely of the limited partnership interests herein described.

Dated: February 11, 1957.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Asst. U. S. Attorney, Chief,
Tax Division;

SIDNEY J. MACHTINGER,
Special Attorney, Internal
Revenue Service;

/s/ EDWARD R. McHALE,
Attorneys for Defendant.

ADAMS, DUQUE &
HAZELTINE,

/s/ BRYANT R. BURTON,
Attorneys for Plaintiff.

Admitted in evidence March 4, 1957. [65]

DEFENDANT'S EXHIBIT B

United States District Court for the Southern Dis-
trict of California, Central Division

No. 15350-WM Civil

LAURENCE V. KANTER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 15399-WM Civil

RUTH WOLINS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 15534-WM Civil

JEROME B. KANTER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

SECOND SUPPLEMENTAL
STIPULATION OF FACT

It Is Hereby Further Stipulated and Agreed
by and between the parties hereto through their

respective counsel of record, that the following facts are true; provided, however, that plaintiffs object to the materiality and relevancy of said facts. [66]

XIV.

From the inception of the partnership business of Kanter & Wolins on April 1, 1944, the value of the corpus of each trust was credited to the capital account of each trust on the books of the Kanter & Wolins partnership. No separate books were ever kept for the trusts. All transactions affecting the trusts were reflected in the capital accounts of the trusts as limited partners on the books of the partnership.

XV.

The original value of the corpus of each trust as of March 3, 1944 was \$15,900.00. Between April 1, 1944 and January 2, 1950, the limited partnership income of each of the trusts was credited by the Kanter & Wolins partnership to each trust as follows:

March 31, 1945	\$2,075.39
March 31, 1946	6,881.59
March 31, 1947	8,107.78
March 31, 1948	7,622.31
March 31, 1949	9,514.48

As of January 2, 1950, the capital account of each trust as reflected on the books of Kanter & Wolins after deducting expenses of administering each trust was as follows:

Jerome B. Kanter, Trust No. 1	\$45,100.57
Laurence V. Kanter, Trust No. 2	43,958.11
Ruth Wolins, Trust No. 3	43,729.66

XVI.

On January 9, 1950, the Kanter & Wolins partnership exchanged substantially all of its assets for all of the common stock in the newly formed McDaniel's Market, a corporation. The total capital of McDaniel's Markets per its books was \$416,810.00, representing the value of the assets of the Kanter & Wolins partnership transferred to the corporation.

On May 31, 1950, the partnership books were posted to show the investment of \$416,810.78 of partnership net worth in the common stock of the corporation which reflected the following investment by the trusts [67] in said common stock:

Jerome B. Kanter, Trust No. 1	\$42,456.11
Laurence V. Kanter, Trust No. 2	41,313.65
Ruth Wolins, Trust No. 3	41,085.20

This left the following balances in said limited partners' accounts invested in the remaining assets of the partnership:

Jerome B. Kanter, Trust No. 1	\$3,364.56
Laurence V. Kanter, Trust No. 2	3,364.56
Ruth Wolins, Trust No. 3	3,364.56

XVII.

Between January 10, 1950 and January 10, 1956, McDaniel's Markets incurred a total operating deficit of \$247,619.93, which arose as follows:

Net loss fiscal year, 1951	(\$ 23,921.08)
Net loss fiscal year, 1952	(194,707.19)
Net profit fiscal year, 1953	36,990.24
Net profit fiscal year, 1954	95,503.62
Net loss fiscal year, 1955	(76,506.89)
Net loss fiscal year, 1956	(84,978.23)

Deficit in surplus account

as of May 31, 1956 (\$247,619.93)

XVIII.

Between January 3, 1950 and January 2, 1955, the limited partnership income or loss for each of the trusts was credited by the Kanter & Wolins partnership to the trusts as follows:

March 31, 1950.....	(\$2,569.82)
March 31, 1951.....	1,210.25
March 31, 1952.....	21.78
March 31, 1953.....	(136.19)
March 31, 1954.....	207.58

As of January 2, 1955, the capital account of each trust as reflected on the books of the Kanter & Wolins partnership after deducting expenses of [68] administering each trust was as follows:

Jerome B. Kanter, Trust No. 1.....	\$47,198.73
Laurence V. Kanter, Trust No. 2....	46,056.27
Ruth Wolins, Trust No. 3.....	45,827.82

XIX.

Since the inception of the trusts, their income as limited partners in the Kanter & Wolins partner-

ship was credited to the capital accounts of the trusts and retained in the partnership.

XX.

No dividends on the common stock have been declared by McDaniel's Markets since its inception.

XXI.

The Kanter & Wolins partnership continues to hold all the common stock. Preferred stock was issued by the corporation in order to obtain outside capital and at various dates the following amounts of preferred stock were outstanding:

May 31, 1951	\$125,000
May 31, 1952	180,200
May 31, 1953	181,275
May 31, 1954	181,275
May 31, 1955	181,275
May 31, 1956	240,225

Preferred stock dividends were paid as follows for the years ending May 31:

May 31, 1951	\$ 6,250.00
May 31, 1952	7,856.96
May 31, 1953	10,876.50
May 31, 1954	10,876.50
May 31, 1955	10,876.50

Dated: This 28th day of February, 1957.

LAUGHLIN E. WATERS,
United States Attorney,

EDWARD R. McHALE,
Asst. United States Attorney,

By /s/ EDWARD R. McHALE,
Attorneys for Defendant.

ADAMS, DUQUE &
HAZELTINE,

By /s/ BRYANT R. BURTON,
Attorneys for Plaintiff.

Admitted in evidence March 4, 1957. [69]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cases:

A. The foregoing pages numbered 1 to 48, inclusive in Case No. 15350-WM, containing the original:

Complaint.

Answer.

Stipulation of Fact.

Order for Findings of Fact, Conclusions of Law and Judgment.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Entry of Judgment.

Notice of Appeal.

Appellee's Additional Designation of Contents of Record on Appeal.

Designation of Contents of Record on Appeal.

and, Pages numbered 49 to 82, inclusive, in Case No. 15399-WM, containing the original:

Complaint.

Answer.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Entry of Judgment.

Notice of Appeal.

Designation of Contents of Record on Appeal.

and, Pages numbered 83 to 116, inclusive, in Case No. 15534-WM, containing the original:

Complaint.

Answer.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Entry of Judgment.

Notice of Appeal.

Designation of Contents of Record on Appeal. [70]

B. Plaintiff's Exhibits 1-A, 1-B, 1-C, 1-D, 1-E.
Defendant's Exhibits A and B.

I further certify that my fee for preparing the foregoing record, amounting to \$2.00, has been paid by appellants.

Witness my hand and the seal of said District Court, this 17th day of October, 1957.

[Seal] JOHN A. CHILDRESS,
Clerk.

By /s/ WM. A. WHITE,
Deputy Clerk. [71]

[Endorsed]: No. 15757. United States Court of Appeals for the Ninth Circuit. Laurence V. Kanter, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed October 17, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15757

LAURENCE V. KANTER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT BY APPELLANT OF POINTS
ON WHICH HE INTENDS TO RELY ON
APPEAL

Laurence V. Kanter, appellant herein, by his attorneys, hereby states that he intends to rely upon the following points in this proceeding:

That the District Court erred:

(1) In admitting into evidence defendant's Exhibit "B" over plaintiff's objection directed to the materiality and relevancy thereof, in that the facts contained in said Exhibit "B" pertain principally to years other than the taxable years in question;

(2) In finding (in its Finding of Fact No. XXVI) that the beneficiaries of the trusts had unlimited power and control over the corpus of the trust in that said Finding of Fact is contrary to law, is not supported by any substantial evidence in the record and is not inferable from the reasons so stated in support of said Finding;

(3) In failing to find as a fact that there was no evidence that the beneficiaries of the trusts had

any express power over the corpus or income of the trusts;

(4) In failing to find as a fact that there was no evidence that the beneficiaries of the trusts had exercised any control over the corpus or income of the trusts;

(5) In concluding (in its Conclusion of Law No. II) that the plaintiff has failed to sustain his burden of proof that he has overpaid his income taxes for the years 1945, 1946 and 1947, in that said Conclusion of Law is contrary to law, contrary to the evidence and inconsistent with the District Court's Findings of Fact numbered XI, XII, and XVII;

(6) In concluding (in its Conclusion of Law No. III) that the undistributed income of the Laurence V. Kanter trust was the income of Laurence V. Kanter as earned by the Kanter and Wolins partnership and was properly taxed to the plaintiff rather than to the trust in that said Conclusion of Law is contrary to law, contrary to the evidence and inconsistent with the District Court's Findings of Fact numbered XI and XII;

(7) In concluding (in its Conclusion of Law No. IV) that Laurence V. Kanter, beneficiary of the Laurence V. Kanter trust, had such control over the corpus of the trust as to make the income therefrom his own in that said Conclusion of Law is contrary to law and is not supported by any evidence in the record;

(8) In concluding (in its Conclusion of Law No. V) that the three (3) trusts established by Minnie

Kanter lacked substance and reality and were not valid under the income tax laws in that said Conclusion of Law is contrary to law and is not supported by any evidence in the record;

(9) In concluding (in its Conclusion of Law No. VI) that Laurence V. Kanter was as much the owner of the income paid by the Kanter and Wolins partnership to the Laurence V. Kanter trust as he was with respect to the income paid directly to him as a limited partner in that said Conclusion of Law is contrary to law and is not supported by any evidence in the record;

(10) In failing to conclude as a matter of law that the undistributed income of the Laurence V. Kanter trust was the income of the trust and not the income of Laurence V. Kanter as a beneficiary thereof;

(11) In failing to conclude as a matter of law that plaintiff has overpaid his income taxes for the years 1945, 1946, and 1947, and is entitled to recover from the defendant the sum of Eight Thousand Six Hundred Fifty Dollars and Thirty-three Cents (\$8,650.33), together with interest thereon as provided by law.

Dated: October 9, 1957.

ADAMS, DUQUE &
HAZELTINE,

By /s/ BRYANT R. BURTON,
Attorneys for Appellant.

[Endorsed]: Filed October 22, 1957.

In the United States Court of Appeals
for the Ninth Circuit

No. 15757

LAURENCE V. KANTER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

RUTH WOLINS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JEROME B. KANTER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION RE DESIGNATION, PRINT-
ING AND USE OF RECORD

It is hereby stipulated by and between counsel
for the respective parties hereto as follows:

(1) The entire records in the cases of Laurence
V. Kanter vs. United States of America, Ruth Wo-
lins vs. United States of America, and Jerome B.
Kanter vs. United States of America as certified to
this Court by the Clerk of the United States District

Court for the Southern District of California, Central Division, are material to the consideration of the appeal.

(2) The following portions of the individual records as certified shall be included in the printed record:

(a) Complaint of Laurence V. Kanter vs. United States of America (No. 15350-WM Civil in the United States District Court) filed on April 3, 1953, including the exhibit attached thereto—(Page 2 of Certified Record).

(b) Answer in said action filed on March 16, 1955—(Page 10 of Certified Record).

(c) Stipulation of Facts filed in said action on or about February 1, 1957—(Page 15 of Certified Record).

(d) Plaintiff's Exhibits 1-A, 1-B, 1-C, 1-D and 1-E, received into evidence as per Minutes of Court dated March 4, 1957—(Exhibits 1-A, 1-B and 1-C are the trust instruments involved in these proceedings; 1-D is the Certificate of Limited Partnership, and 1-E is the Limited Partnership Agreement).

(e) Defendant's Exhibits A and B, received into evidence as per Minutes of Court of March 4, 1957—(Exhibit A is a Supplemental Stipulation of Facts and Exhibit B is a Second Supplemental Stipulation of Facts).

(f) Order for Findings of Fact, Conclusions of Law and Judgment—(Page 23 of Certified Record).

(g) Findings of Fact, Conclusions of Law and Judgment—(Page 25 of Certified Record).

(h) Judgment entered in said action on July 29, 1957—(Page 40 of Certified Record).

(i) Notice of Appeal in said action filed on September 19, 1957—(Page 42 of Certified Record).

(j) Statement by Appellant of Points on Which He intends to Rely on Appeal—(Not included in Certified Record; filed directly in Court of Appeals).

(k) This Stipulation re Designation, Printing and Use of Record.

(3) All portions of the records as certified by the Clerk of the United States District Court for the Southern District of California, Central Division, which are not included in the printed record, as indicated above, may be referred to by either party in briefs or arguments, the same as if said portions had been part of the printed record.

(4) The record as designated herein concerning the case of Laurence V. Kanter v. United States of America (No. 15350-WM Civil in the United States District Court) may be used in the following companion cases with the same force and effect and to all intents and purposes as though a duplicate of said record had been designated, printed, served and filed in each of said companion cases:

(1) Ruth Wolins v. United States of America (No. 15399-WM Civil in the United States District Court).

(2) Jerome B. Kanter v. United States of America (No. 15534-WM Civil in the United States District Court).

Dated: October 18, 1957.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Assistant United States At-
torney, Chief, Tax Division.

By /s/ EDWARD R. McHALE,
Attorneys for Defendant.

ADAMS, DUQUE & HAZEL-
TINE,
BRYANT R. BURTON,

By /s/ BRYANT R. BURTON,
Attorneys for Appellants.

Ordered: Record in Case No. 15757 only be printed; records in Cases No. 15758 and 15759 to be referred to by the parties in their briefs and single briefs to be filed covering all three cases.

/s/ ALBERT LEE STEPHENS,
Chief Judge, U. S. Ct. of Appeals for the Ninth
Circuit.

[Endorsed]: Filed October 22, 1957.